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89-855 (1)

Supreme Court, U.S.

FILED

NOV 24 1989

JOSEPH F. SPANIOLO, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

ELEANOR KELLY O'NEILL

Petitioner,

vs.

DEPARTMENT OF THE ARMY, JOHN O. MARSH JR.,

BARBARA ANN ELLER, ET AL.

Respondents.

PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE
FEDERAL CIRCUIT

Eleanor Kelly O'Neill,
(Attorney Pro Se)
P. O. Box 195,
Ruby, New York 12475
(914-336-5396)

November 21, 1989

38 9/2



(1)

QUESTIONS PRESENTED FOR REVIEW

(1) Whether the U.S. District Court Eastern District of North Carolina and the United States Court of Appeals For The Fourth Circuit, erred, in ordering the defendants' motion to dismiss for lack of subject matter and personal jurisdiction, be affirmed?

(2) Whether the U.S. District Court Eastern District of North Carolina and the United States Court of Appeals For The Fourth Circuit, erred in not considering 29 U.S.C. 706e, Title VII providing an aggrieved party 90 days to file a civil action vs 30 days?

(3) Whether the U.S. District Court Eastern District of North Carolina and the United States Court of Appeals For The Fourth Circuit, erred in not considering Petitioner's requesting counsel in

her request for civil action tolled, the time for service ,which was done again, by counsel in 12/87?

(4) Whether the U.S District Court Eastern District of North Carolina erred in refusing to again, appoint counsel to the Pro Se plaintiff, since the U.S. District Court ,Middle District of Florida, had already done so, for the Pro Se Plaintiff, prior to the change of venue?

(5) Whether the U.S District Court Eastern District of North Carolina and the United States Court of Appeals For The Fourth Circuit erred, in not considering that Plaintiff, named the agency in the original body of the civil suit of complaint and caption And that Plaintiff requested a court appointed attorney, who when appointed, informed plaintiff he was amending her complaint



(iii)

to include the Secretary of the Army, so service might be accomplished, (as it was 12/87?)

.....(6)...Whether the U.S. District Court Middle District of Florida erred in losing Pro Se Plaintiff's summons that were requested to be served on John O. Marsh, Secretary of the Army and Barbara Ann Eller, as Plaintiff, included the cost of service with a money order for the filing fee 5/87?

(7) Whether the United States Army USACARA/EEOC investigators erred in deliberately deleting 20+ letters of commendation of Pro Se Petitioner and her prima facie evidence refuting sworn EEOC statements of witnesses from her EEOC response

Please see EEOC INVESTIGATION in record



(8) Whether the DA/USACARA/EEOC-Atlanta had a right to refuse to interview the prime witness (Betty Walker) in the case, claiming she was UN-available, when other witnesses asked me, why, though she was in the building she was not called to give testimony, but they were?. ²

² Petitioner went over to the EEOC office and specifically told Patricia Crane EEOC agency head minority (black) that she had to leave town but wanted to make sure Miss Scarborough EEOC Atlanta interviewed Betty Walker as she had not done so as of that day.

(9) Whether Pro Se Petitioner is entitled to latitude in the date of her reinstatement, of aprox. 1½ times the time it takes EEOC to settle her case.



(v)

and all back pay entitlements, leave
time and all things to make me whole?

(10) Whether Pro Se Petitioner can,
amend or have a court appointed attor-
ney amend, my complaint to include the
head of the agency, Fed. R. Civ. P.

15(a), in addition to dis-crimination
(male/female), as the male
probationer, Al Preston, unlike me did
receive an evaluation and did
NOTevaluated, and not re-ceive any
reprimands for swearing and threatening
Mrs Walker, and get my job assignment
after a female, (who was told she would
never be assigned as ILL Lib'n AGAIN)
was temporarily, put in there, to avoid
the sexual discrimination issue I'm now
putting before the Court?,

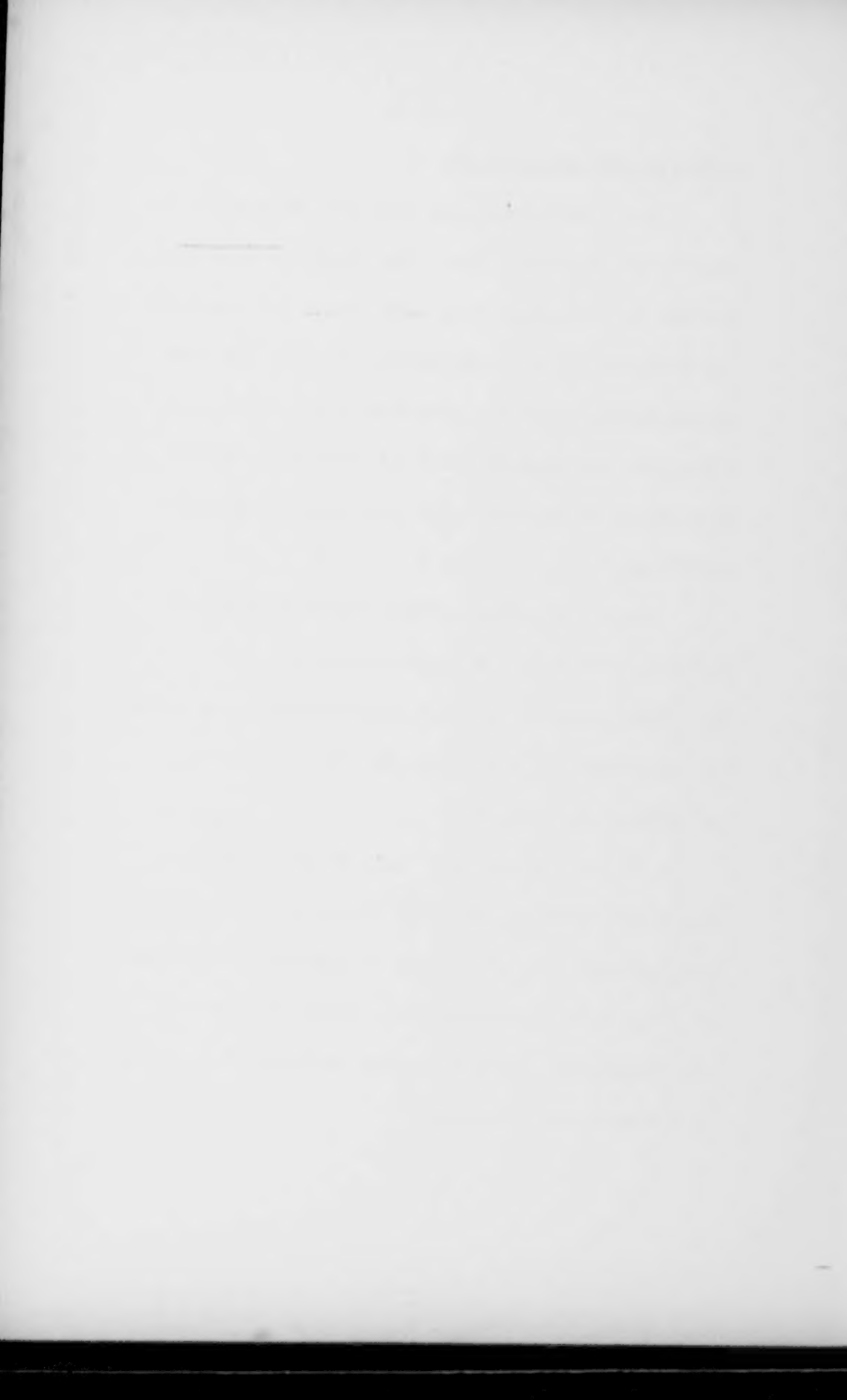


SUBSIDIARY QUESTIONS

(1) Whether the United States Court Of Appeals For The Fourth Circuit, erred in considering the date of receipt of Plaintiff's complaint, cited by the defendant, while ignoring the date and related circumstances of the Plaintiff Pro Se's original and earlier timely mailing.?

(11) Whether, the United States District Court, Middle District of Florida, erred in not recording the date of receipt of the Pro Se Plaintiff's original complaint?

(111) Whether, the United States District Court, Middle District of Florida, erred in granting a change of venue to Plaintiff's counsel, when Plaintiff, had expressly stated she wanted the case to remain in Florida?



PARTIES INVOLVED

Pursuant to Supreme Court Rule 21 the parties involved are listed here or in footnotes under questions

Secretary of the Army, John O. Marsh
Barbara Ann Eller, DA Librarian et al,
Respondents

AUSA Rudolph Renfer, Respondents Counsel
EEOC Ft. Bragg, Patricia Crane minority
(black). .EEOC/USACARA/Atlanta-Miss
Scarborough and other interested
parties.

DA/FT BRAGG/Civilian Personnel Office
agency head and minority (black) Ms.
DianeShepherd and any other related
parties.'



DA/Ft Bragg Library staff; including Chief of Morale Support Activities Division, Dennis E. Allen(1982). Evelyn Stephen, Lucille Memory, Beverly Wood, Lenore Rogers, Mary Dimmick, Mary Magsby.

All the minority, black, staff members (3), including, Betty Walker, and Rosetta "Pat" Darlington, (who comprised less than a 1/3 of the MPL staff but who were referred to more than 111 times in Supervisor Eller's, MFR's, re: me) Eller courted and encouraged them to report on me, with either promises of promotions or actual promotions and favors.

This made me appear, anti-black, (not a team player) or a person who was having problems with our small minority staff while couching Eller, in a positive, affirmative action role, this couldn't have been further from the truth, as his-tory shows But it did accomplish the one thing Eller needed, which was the support and APPROVAL of minority black, CPO Library liaison, Diane Shepherd, TO FIRE ME.

At the very same time I was seeking Ms Shepherd's help in solving my dilemma, of trying to transfer to another position. But Eller had told me she would not sign my SCAP (Supervisory Career Appraisal Plan) which had to be done if I was to be able to transfer ??CONFLICT OF INTEREST on Mrs. Shepherds part?

Many staff who wrote letters of commendation attesting to my amenable professional mannery and willingness to go that extra step to help anyone.



(ix)

See record for 20+ letters of recommendation. IF THEY HAVE BEEN REMOVED PLEASE ASK PRO SE PETITIONER FOR THEM.

U.S. Dist. Ct. Middle Dist of FL/Ocala

Justice Susan Black

U.S. Dist Ct. Eastern Dist. of NC/Fay Div.

Magistrate J. Rich Leonard

Magistrate Charles R. McCotter

Justice Malcolm J. Howard

U.S CT OF APPEALS, Fourth Circuit

Justices Widener, Phillips and Wilkinson

* Linda Muchow, Manager/IRS

Thomas Beam, IRS

* Mrs Muchow was involved in discriminatory conversations with Eller negative to me Violating my Civil Rights and in violation of Federal Prohibitive Personnel Practices Act. statutes. This cost me my IRS position.



(x)

PRO SE PETITIONER REGRETS ANY PROBLEMS
CAUSED FOR THE STAFF AND JUSTICES BUT
ONLY LEARNED 11/20/89 from your staff
that a Petitioner may go into the merits
of the case and not just discuss the
points of law used by the U.S. Attorney,
District and Appellate Courts, in Ques-
tions for Review.

Eleanor Kelly O'Neill, Petitioner Pro Se



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- I. Respondents cited outdated case law, Courts incorectly Affirmed. Original Title VII statute stated charging party had 30 days to file a court suit, upon receipt of the letter., As of 3/24/72 its 90 days.
- II. Pro Se Petitioner was within time limit and her letter also requested an attorney, tolling the time, until the court appointed (11/87) attorney, had the agency served (12/87).



TABLE OF CITATIONS

Cases:

Page

EMPLOYMENT DISCRIMINATION LAW. 2d
ed. Five Year Cumulative Supplement
Schlei/Grossman.c, 1983 Page 1058

29 USC-706e.

questions

Zipes v Trans World Airlines, Inc.
455 US 385, Classified to U.S. Su-
preme Court Digest. Lawyers' Ed.

[5] In Love v Pullman Co. 404 US
522, 30 L. Ed 2d 679, 92 S Ct 616
(1972).



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

NO.

ELEANOR KELLY O'NEILL

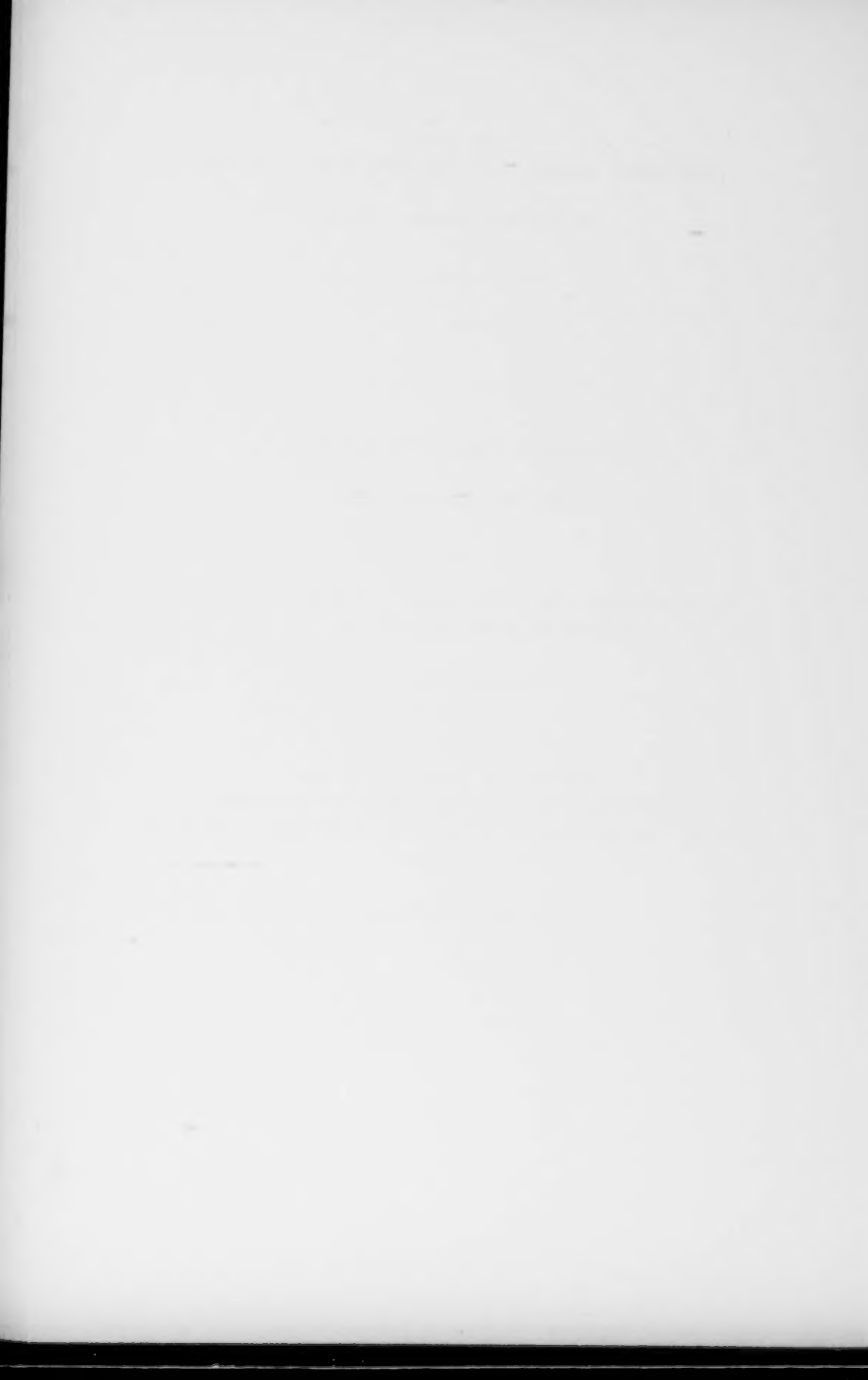
PRO SE Petitioner

vs.

DEPARTMENT OF THE ARMY, JOHN O MARSH
JR., BARBARA ANN ELLER, ET AL.

Respondents.

PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FEDERAL CIRCUIT



Petitioner, Eleanor Kelly O'Neill respectfully prays that a Writ of Certiorari is issued to review the Judgment and Opinion of the United States Court of Appeals for the Federal Circuit entered in the above-entitled case on August 25, 1989.

OPINIONS BELOW

The Opinion of the Court of Appeals rendered August 9, 1989 is Unpublished and included in the Appendix to this Petition at page A-1 to A- . the Orders of the U.S. District Court for the Eastern District of North Carolina entered on the twentieth and twenty-ninth of December 1988 follow

JURISDICTION

The Judgment of the Court of Appeals was entered on August 4, 1989. A Petition For Rehearing and Suggestion For hearing En Banc was timely filed on August 18, 1989. The Petition for Rehearing and Rehearing En Banc, was denied by Order dated August 25, 1989 and appears in the Appendix.

STATUTES AND RULES INVOLVED



STATEMENT OF THE CASE

Time doesn't permit me the latitude to go into a great many of incidents of discrimination perpetrated against me. As I stated earlier on , I only learned today that I could have the latitude to go into the merits of my case. Please see my record as I will refer to it .

I was fired from the Main Post Library of Ft. Bragg 7 months after my supervisors first attempt, which began the third week after I arrived (according to her Memorandum For Record MFR's).

None of the accepted and mandated Department of the Army/DA Regulations or those of the Office of Personnel Management were followed before, during or



after.

None of the investigatory agencies or related parties cared to take note of that fact

In the beginning a retired Col. Peterson tried to assist me in my case but when I was forced to leave my home I was without further help until 11/87 when the court in Florida appointed an attorney.

I requested the attorney, Mr. Arias, not to transfer my case from the state of Florida, but it was done, WHY?.

Immediately I was asked to defend myself against AUSA Render's request to dismiss, I thought that my request for counsel in N.C. would take presedent but when I found it didn't, I asked for an



extention, it was denied and the case was settled as far as the court was concerned. All during this time I pleaded for assistance from Mr. Arias but he did NOT respond to my letters or return my telephone calls.

On my appeal I paid a local N.C. attorney who worked with the union and who I thought was conversent with EEOC law \$500.00 for a response (please note it in the record)

As I had no more money and had borrowed the first amount from elderly family I filed my final appeal and this.

The discrimination has been on-going



REASONS FOR GRANTING THE WRITREASONS

Pro Se Plaintiff feels the Respondent and the courts erred in relying on the original 17 year old pre March 24, 1972 Title VII 30 day statute when any notice issued after the above date relies on the expanded 90 day rule.

If for some inexplicable reason one still wanted to ignore the current law the timeliness of my mailing and reliance on informed U.S. Postal personnel that my letter would be delivered in Jacksonville that Saturday for definite delivery the following Monday should suffice, as being alegitimate reason as I took all due care possible to comply with the outdated right to sue letter.. Pro Se Petitioner also requested an attorney in her letter requesting suit, which is



supposed to toll the time until one is appointed. This then makes the summons and the amended return viable.

CONCLUSION

If the Respondents reasoning and the lower courts reliance on it are not sound then their arguments fall as a house of cards.

If I did have 90 days to respond to the right to sue letter, my letter, mailed on April 25, 1987 is more than timely and my request for an attorney covers the time of service. Though again I have stated the agency repeatedly in my letter and caption and in all the other related documents (Please note the voluminous record of Petitioner.)



~~Summons~~ were returned by me to the Florida Court, for service, on my second mailing

(5/87) and had John O. Marsh and Barbara Ann Eller's name and address typed on them. I had paid for them to be served? Why is it they were never served?

Another critical aspect was the need of an attorney ,granted by one court only to be taken away by another.

This obviously effected my ability to list all the pertinent case law in defense of my case and gain a verdict favorable to me.

Most importantly I have read numerous references to the intent of Congress in passing the Title VII legislation

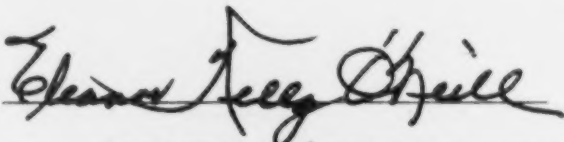


And it was meant to help those of us who are wantonly and repeatedly discriminated against.

Therefore if we look beyond the alleged technical problems we get at the real issue the continued harrassment and discrimination of me by a series of self interested government employees who felt they were above the law of the land and the law of the agencies they were employed by

Respectfully submitted,

ELEANOR K. O'NEILL

By 

ELEANOR Kelly O'NEILL, Pro SE
Petitioner

November 21, 1988



APPENDIX



UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 89-2936

ELEANOR KELLY O'NEILL
Plaintiff - Appellant

v.

BARBARA ANN ELLER;
and Others
Defendants - Appellees

Appeal from the United States District
Court for the Eastern District of North
Carolina, at Fayetteville. Malcolm J.
Howard, District Judge. (C/A No. 88-37)

Submitted: May 24, 1989

Decided: August 9, 1989

Before WIDENER, PHILIPS, AND WILKINSON,
Circuit Judges.

Eleanor Kelly O'Neill, Appellant Pro Se.
Rudolf A. Renfer, Jr. (OFFICE OF THE
UNITED STATES ATTORNEY) For Appellees.



PER CURIAM:

Eleanor Kelly O'Neill seeks to appeal the district court's order dismissing her Title VII action. 42 U.S.C. § 2000-16(c). Our review of the record and the district court's opinion accepting the recommendation of the magistrate discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court. O'Neill v. Eller, C/A No. 88-37 (E.D.N.C. Dec. 21, 1988). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.



* On appeal, O'Neill maintains that her complaint was filed in the Middle District of Florida on April 28, 1987, rather than on May 13, 1987, as stated by the magistrate. However, April 28 was still one day after the expiration of the 30-day filing period established by 42 U.S.C. § 2000a-16(c).



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF NORTH CAROLINA
FAYETTEVILLE DIVISION
CASE NO. 88-37-CIV-3

ELEANOR K. O'NEILL)	
Plaintiff)	
)	
V.)	<u>ORDER</u>
)	
BARBARA ANN ELLER, et al.,)	
Defendants.)	

This action is before the court on
the United States Magistrate's
memorandum and recommendation filed
December 2, 1988 by Charles K. McCotter,
Jr.



More then ten days have elapsed since the Magistrate's recommendation was filed and the plaintiff has filed no response thereto as provided by law. The court's independent and thorough review of the record in the case has led to the conclusion that the Magistrate's recommendation is correct and in accordance with law and should therefore be accepted by the court. Accordingly, the same is hereby adopted by the court as it's own and for the reasons therein it is now

ORDERED that the defendant's motion to dismiss for lack of subject matter and personal jurisdiction is ALLOWED and the plaintiff's action dismissed.

SO ORDERED this 20th December 1988.

MALCOLM J. HOWARD
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

NO. 88-37-CIV-3

ELEANOR K. O'NEILL,)	
Plaintiff,)	
)	
V.)	ORDER
)	
BARBARA ANN ELLER, et al,)	
Defendants.)	

ELEANOR K. O'NEILL, Pro SE.



This action is before the court on plaintiff's motion for extension of time to respond to the Memorandum and recommendation of the United States Magistrate filed in this case on December 2, 1988. Good cause for said extension not having been shown, plaintiff's motion is hereby denied. as stated by this court in its order of December 20, 1988, adopting as its own the Magistrate's Memorandum and Recommendation, defendants' motion to dismiss for lack of subject matter and personal jurisdiction is hereby allowed and the plaintiff's action dismissed.

SO ORDERED this 29th day of
December, 1988.

MALCOLM J. HOWARD
United States District Judge
At Greenville, North Carolina, O'Ne24



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF
NORTH CAROLINA
NO. 88-37-CIV-3

JUDGEMENT IN CIVIL CASE

ELEANOR KELLY O'NEILL
Plaintiff

V.

BARBARA ANN ELLER, ET AL.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED pursuant to the Court's order filed December 21, 1988, defendant's motion to dismiss is ALLOWED and this action is DISMISSED. Plaintiff shall have and recover nothing from the defendants.

December 28, 1988 J. RICH LEONARD
Clerk

Eleanor k. O'Neill, Pro Se.

UNITED STATES DISTRICT COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 89-2936 CA-88-37

ELEANOR KELLY O'NEILL,
Plaintiff/Appellant

V. August 18, 1989

JOHN O. MARSH, BARBARA ANN ELLER, ET AL,
Dept of the Army

PETITION FOR REHEARING
SUGGESTION FOR REHEARING IN BANC

It is the judgement of the
Plaintiff/Appellant, Pro Se, that the
example(s) 1. and/or 2., listed under
the "purpose" section, in the NOTICE OF
JUDGEMENT, exist in her case. The
Plaintiff/Appellant refers to current
SUPREME COURT CASE LAW (Zipe?), which
provides for equitable treatment and
extensions of filing time, in EEOC
cases, where a condition beyond the
petitioner's control exists.



The Plaintiff/Appellant was told by qualified Postal (counter) personnel in the local Dunnellon, Florida 32630, post office that her COMPLAINT would be delivered to the U.S. District Court in Jacksonville, Florida 32201 on Monday, 27 April 1987, if she mailed it Saturday morning, April 25, 1987. The employee(s) said the mail would go out around noon and be in Jacksonville Saturday evening, in plenty of time for my Monday morning deadline. Petitioner had no control over possible problems in the mail receipt of the Federal Building or the Post Office and contends the mailing was timely, 25 April 1987 for delivery 27 April 1987, according to the best expert information available to the plaintiff, the postal worker.



Plaintiff request the honorable
Justice's reverse their 9 August 1989
decision and grant the
Plaintiff/Appellant, Pro Se, PETITION
FOR REHEARING AND SUGESTION FOR
REHEARING IN BANC, based on the current
U.S. SUPREME COURT DECISION (see par II)
and other arguments to toll time, in
EEOC case law, for complainants.
All the obove statements are true to the
best of my knowledge.

Respectfully submitted

ELEANOR KELLY O'NEILL

Plaintiff/Appellant, Pro Se

Copy to Mr. Rudolph A. Renfer, Jr.

(Appellees Attorney), Office of the U.S.
Attorney, Raleigh, N.C., (via U.S.
Mail).



UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 89-2936

ELEANOR KELLY O'NEILL

Plaintiff/Appellant

V.

August 25, 1989

BARBARA ANN ELLER, and others

Defendant/Appellee

On petition for Rehearing with Suggestion
for Rehearing in BANC

The appellant's petition for
rehearing and suggestion for rehearing
in banc were submitted to this court.
As no member of this Court or panel

requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Wilkinson with the concurrence of Judge Widener and Judge Phillips.

For the Court,

JOHN M. GREACEN
CLERK

ELEANOR KELLY O'NEILL, Pro Se

CERTIFICATE OF SERVICE

I hereby Certify that three copies of the foregoing PETITION FOR WRIT OF CERTIORARI are being mailed to the Solicitor General, Department of Justice Washington, D.C. 20530, as proof of service in accordance with Rule 23 .4(a) and .5(c).

Deanne Kelly Hill

Mary B. Cioffi
Notary Public

11/21/89

MARY B. CIOFFI
Notary Public, State of New York
Qualified in Dutchess County
No. 4621618
Commission Expires April 30, 1991